



AF  
JRW

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Niels Gebauer

Serial No.: 09/189,615

Examiner: G. Robinson

Filing Date: November 9, 1998

Group Art Unit: 2168

For: METHOD AND APPARATUS FOR PROVIDING AN AVAILABILITY MESSAGE TO A  
REMOTE USER TERMINAL

Docket No.: 33012/246/101

## TRANSMITTAL SHEET

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

### CERTIFICATE UNDER 37 C.F.R. 1.8:

I hereby certify that this correspondence and the documents described herein are being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 15 day of August, 2007

Carolyn I. Erickson

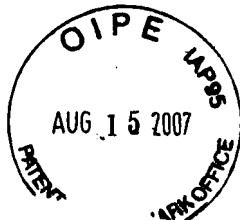
We are transmitting herewith the attached:

- ☐ A check in the amount of \$ \_\_\_\_\_ is enclosed.
- ☐ Small entity status of this application under 37 C.F.R. 1.9 and 1.27 has been established.
- ☒ Other: Third Supplemental Appeal Brief in Triplicate.
- ☒ Please charge any deficiencies or credit any over payment in the enclosed fees to Deposit Account 14-0620.

By: Wayne A. Sivertson

Wayne A. Sivertson  
Reg. No. 25,645

NAWROCKI, ROONEY & SIVERTSON, P.A.  
Suite 401, Broadway Place East  
3433 Broadway Street N.E.  
Minneapolis, Minnesota 55413  
Telephone: (612) 331-1464  
Facsimile: (612) 331-2239



P A T E N T

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of	)	
	)	
Niels Gebauer	)	Examiner G. Robinson
	)	
Serial No. 09/189,615	)	Group Art Unit 2168
	)	
Filing Date: 11/09/98	)	
	)	Docket No. 33012/246/101
	)	
For: METHOD AND APPARATUS	)	<b><u>THIRD SUPPLEMENTAL</u></b>
	)	<b><u>APPEAL BRIEF</u></b>
PROVIDING AN AVAIL-	)	
ABILITY MESSAGE TO	)	
REMOTE USER TERMINAL	)	
(Amended)	)	

**APPELLANT'S THIRD SUPPLEMENTAL BRIEF**  
**FILED UNDER 37 C.F.R. § 41.37**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

<p><b>CERTIFICATE UNDER 37 C.F.R. 1.8:</b> I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, Alexandria, VA, 22313-1450 on this <u>13</u> th day of <u>August</u>, 20 <u>07</u>.</p> <p>By <u>Carolyn I. Erickson</u></p>
---

This third supplemental appeal brief is being filed in triplicate within thirty days of the Notification of Non-Compliant

Appeal mailed July 12, 2007. Permission is hereby granted to charge or credit deposit account number 14-0620 for any errors in fee calculation. Appellants request this Supplemental Appeal Brief be made of record and fully considered.

**REAL PARTY IN INTEREST**

The Real Party in interest is:

Unisys Corporation

Township Line and Union Meeting Roads

Blue Bell, Pennsylvania 19424

being the assignee of the entire right, title, and interest by all inventors, by way of assignment documents filed at Reel 9576, frame 0750, in the United States Patent and Trademark Office.

**RELATED APPEALS AND INTERFERENCES**

There are no known pending Appeals and/or Interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal. Therefore, there are no decisions to be placed in the attached Related Proceedings Appendix.

## TABLE OF CONTENTS

TABLE OF CONTENTS . . . . .	3
STATUS OF CLAIMS . . . . .	7
STATUS OF THE AMENDMENTS . . . . .	7
SUMMARY OF CLAIMED SUBJECT MATTER . . . . .	9
GROUND OF REJECTION TO BE REVIEWED ON APPEAL . . . . .	16
ARGUMENT	
. . . . .	17
I. Claims 1-22 are not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia....	17
I.A. Claim 1 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia	20
I.B. Claim 2 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia..	21

I.C. Claim 3 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.....	. . . .21
I.D. Claim 4 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.....	. . . .22
I.E. Claim 5 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	22
I.F. Claim 6 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	22
I.G. Claim 7 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.....	. . . .23
I.H. Claim 8 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	. . . .24
I.I. Claim 9 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	25
I.J. Claim 10 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	26

I.K. Claim 11 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	27
I.L. Claim 12 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .	28
I.M. Claim 13 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.....	29
I.N. Claim 14 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.....	30
I.O. Claim 15 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	31
I.P. Claim 16 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	31
I.Q. Claim 17 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	32
I.R. Claim 18 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	33

I.S. Claim 19 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	34
I.T. Claim 20 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	35
I.U. Claim 21 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia .....	36
I.V. Claim 22 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia	.37
CONCLUSION . . . . .	39
CLAIMS APPENDIX . . . . .	40
EVIDENCE APPENDIX . . . . .	48
RELATED PROCEEDINGS APPENDIX . . . . .	49

### **STATUS OF CLAIMS**

The subject patent application was filed on November 9, 1998 containing claims 1-20. Amendments to the claims and/or specification and drawings were filed on March 28, 2001, September 14, 2001, April 4, 2002, July 6, 2002, December 16, 2002, January 17, 2003, May 23, 2003, July 18, 2003, February 6, 2004 July 12, 2004, March 1, 2005, July 20, 2005, September 20, 2005, March 6, 2006, and July 19, 2006. Claims 21-22 were newly presented. It is believed that all claim amendments have been entered. The attached claims appendix contains finally rejected pending claims 1-22, being all pending claims, in their present form as finally rejected by final official action of the Examiner mailed May 31, 2006.

### **STATUS OF THE AMENDMENTS**

Applicants filed amendments on March 28, 2001, September 14, 2001, April 4, 2002, July 6, 2002, December 16, 2002, January 17, 2003, May 23, 2003, July 18, 2003, February 6, 2004 July 12, 2004, March 1, 2005, July 20, 2005, September 20, 2005, March 6, 2006, and July 19, 2006. These amendments were filed in response to the various official actions of the Examiner. The Examiner finally



rejected claims 1-22, being all pending claims by way of final office action mailed May 31, 2006. Applicants responded to this final office action by way of Amendment After Final under 37 C.F.R. 1.116 filed July 19, 2006. Though the Examiner has entered this amendment, claims 1-22 remain finally rejected.

### SUMMARY OF CLAIMED SUBJECT MATTER<sup>1</sup>

The present invention generally relates to data base management systems and more particularly relates to enhancements for providing access to data base management systems via internet user terminals<sup>2</sup>. The major advantage of the Internet is its universality. Nearly anyone, anywhere can become a user. That means that virtually all persons are potentially Internet users without the need for specialized training and/or proprietary hardware and software. One can readily see that providing access to a proprietary data base management system, such as Classic MAPPER, through the Internet would yield an extremely inexpensive and universally available means for accessing the data which it contains and such access would be without the need for considerable specialized training<sup>3</sup>.

A special problem related to the Internet protocol is the inherent inability of the Internet to describe the status of a requested resource. In general, the only information that the Internet can determine from the unavailability of a requested

---

<sup>1</sup> The references to the specification and drawings provided herein are only exemplary and are not deemed to be limiting. The purpose of the references is to enable the Board to more quickly determine where the claimed subject matter is described within the present application.

<sup>2</sup>See Specification at page 3 lines 3-5.

<sup>3</sup>See Specification at page 4, line 19, through page 5, line 2.

resource is that the requested resource is unavailable. Ordinarily, this is accomplished by a simple time-out. However, if the requestor is provided no further information, it is unknown whether the resource is unavailable because it is busy, unavailable because it is not functioning, unavailable because it has been improperly addressed, unavailable because it does not exist, etc. As a result, the user is given no help with regard to what should be done concerning the unavailability of the requested resource<sup>4</sup>.

For many Internet transactions, this lack of information is acceptable, because when making a resource request, the user is often searching for something without knowing exactly what type of response to expect. Unavailability simply means to continue the search elsewhere. However, users of existing proprietary data base management systems need to be provided with further information, because they are accustomed to utilizing a dedicated resource having defined and known characteristics. They are not at liberty to simply search elsewhere. They need to know that they have properly addressed an existing resource. If the resource is unavailable because it is busy or has failed, they need to know when to try again<sup>5</sup>.

The present invention overcomes the disadvantages of the prior art by providing a method of and apparatus for utilizing the power

---

<sup>4</sup>See Specification at page 6, lines 14-22.

<sup>5</sup>See Specification at page 7, lines 1-9,

of a full featured data base management system by a user at a terminal coupled to the world wide web or internet. In order to permit any such access, the present invention must first provide a user interface, called a gateway, which translates transaction data transferred from the user over the internet in HTML format into a format from which data base management system commands and inputs may be generated<sup>6</sup>. To make access to a proprietary data base by Internet users practical, a sophisticated security system is also required to prevent intentional or inadvertent unauthorized accesses<sup>7</sup>.

Given that the gateway, security system, and service processing combine to provide the internet terminal with the full features of the existing proprietary data base management system, the data base management system client can conveniently access the data base from either an existing dedicated terminal or from an internet terminal. The preferred mode of the present invention provides an additional feature to make the usage comparable from either terminal. A message may be stored within the repository to notify potential users of the availability status of the data base management system. This message may be composed and/or modified by

---

<sup>6</sup>See Specification at page 8, lines 3-9,

<sup>7</sup>See Specification at page 8, lines 15-17.

the administrator to provide the user with whatever information may be deemed appropriate in view of the unavailability<sup>8</sup>.

The administrator creates a text file containing the desired message to be stored in the repository. An object is created whereby the service handler converts the text file to an HTML page and returns it to a requestor upon the occurrence of one or more predetermined conditions. Typical conditions include, system maintenance precluding availability, extensive user queuing, and major data base updating<sup>9</sup>.

Claims 16 and 18 are the only pending claims introducing "means-plus-function" limitations. Claim 16 has four such limitations which are correlated to Applicants' disclosure as follows:

a) "permitting means for permitting a user to interact with a digital data base by generating a service request in anticipation of a response"<sup>10</sup>;

b) "providing means responsively coupled to said permitting means for providing said user with access to a publicly accessible digital communication network via service-based requests"<sup>11</sup>;

c) "offering means responsively coupled to said permitting means for offering data processing services according to dialog-

---

<sup>8</sup>See Specification at page 10, lines 10-18,

<sup>9</sup>See Specification at page 10, lines 19-23.

<sup>10</sup>See Specification at page 19, lines 4-6 and Fig. 4, element 54.

<sup>11</sup>See Specification at page 19, lines 4-6 and Fig. 4, element 66.

based requests if available by honoring said service request to generate said response"<sup>12</sup>; and

d) "notifying means responsively coupled to said offering means and said permitting means for notifying said user by transfer of an HTML display page in response to said service request of the unavailability of said offering means when said offering means is unavailable and that said service request will not be honored unless subsequently reinitiated at a time during which said offering means is available"<sup>13</sup>.

Claim 18 has a single "means-plus-function" element:  
"storing means for storing a predefined unavailability message as a text file"<sup>14</sup>.

In accordance with the Notification of Non-Compliant Appeal Brief mailed July 12, 2007, Applicants herewith endeavor to "separately map each independent claim to the specification by page and line number and to the drawings if any".

Claim 1:

--- element a -- see Figs. 4 and 11 and specification at pages 20-21.

Claim 6:

---

<sup>12</sup>See Specification at page 19, lines 2-4 and Fig. 4, element 62.

<sup>13</sup>See Specification at page 21, lines 16-23 and page 36, lines 2-7; and Figs.4 and 11.

<sup>14</sup>See Specification at page 20, lines 1-2, and Fig. 4, element 80.

--- element a -- see Fig. 4, element 54, and specification at page 19, lines 4-6;

--- element b -- see Fig. 4, elements 66, and specification at page 19, lines 4-6;

--- element c -- see Fig. 4, element 62, and specification at page 19, lines 2-4;

--- element d -- see Fig. 4, element 62, and specification at page 19, lines 2-4;.and.

--- element e -- see Figs. 4 and 1, and specification at page 21, lines 16-23 and page 36, lines 2-7.

Claim 11:

--- element a -- see Fig. 4, element 66, and specification at page 19, lines 4-6;

--- element b -- see Fig. 4, element 62, and specification at page 19, lines 2-4;

--- element c -- see Fig. 4, element 62, and specification at page 19, lines 2-4; and

--- element d -- see Figs. 4 and 11, and specification at page 21, lines 16-23, and page 36, lines 2-7.

Claim 21:

--- element a -- see Fig. 4, element 54, and specification at page 19, lines 4-6;

--- element b -- see Fig. 4, element 66, and specification at page 19, lines 4-6;

--- element c -- see Fig. 4, element 62, and specification at page 19, lines 2-4;

--- element d -- see Fig. 4, element 80, and specification at page 20, lines 1-2; and

--- element e -- see Figs. 4 and 11, and specification at page 21, lines 16-23, and page 36, lines 2-7.



GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Are claims 1-22 unpatentable under 35 U.S.C. 103(a) as being obvious over COOL ICE User's Guide release 1.0 (hereinafter referred to as "Unisys") in view of U.S. Patent No. 6,094,659, issued to Bhatia (hereinafter referred to as "Bhatia")?

## ARGUMENT

### **I. Claims 1-22 are not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Claims 1-22 have been rejected under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia. This ground of rejection should be reversed for failure of the Examiner to make a *prima facie* case of obviousness as specified by MPEP 2143.

To make a *prima facie* case of obviousness, MPEP 2143 requires the Examiner to provide evidence and argument showing: 1) motivation to make the alleged combination; 2) reasonable likelihood of success of the alleged combination; and 3) all claimed elements within the alleged combination. The Examiner has failed to make any of these three required showings for any of the rejected claims. Therefore, because the Examiner has not made a *prima facie* case of obviousness, Applicants need not and indeed cannot offer appropriate evidence and argument in rebuttal.

The first showing required of MPEP 2143 is that of "motivation". In her only apparent attempt at showing motivation, the Examiner states:

It would have been obvious to one of ordinary skill at the time of the invention to have combined Bhatia with Cool ICE User's Guide because Bhatia is concerned with informing a user of a failure condition through a set of predefined messages and a status message is an important message that can be implemented with a high level language for communication. (Emphasis added)

This statement is clearly erroneous. Bhatia is concerned with a "Web Server for use in a LAN Modem"<sup>15</sup>. Therefore, the only "failure condition or other operational event" of concern to Bhatia is directly associated with the LAN Modem. The Abstract provides in part:

The resulting page informs a user stationed at the workstation of a failure condition or other operational event that then occurred at the LAN modem. (Emphasis added)

Unisys makes no mention of a LAN (LOCAL AREA NETWORK) or LAN modem. Furthermore, Unisys has no need for a LAN or a LAN modem. Therefore, Applicant strongly disagrees that anyone practicing Unisys would have any motivation to employ a LAN or LAN modem. Such an element would be clearly superfluous to the teaching of Unisys.

Applicant made this argument to the Examiner in the Amendment After Final filed July 19, 2005. By way of response, the Examiner acknowledges her confusion with regard to the LAN of Bhatia and the

---

<sup>15</sup>See Title.

claimed "publicly accessible digital data communication network".  
She states in her Advisory Action mailed August 4, 2006:

...i.e., public digital communication network suggests  
LAN structure....  
Though it may be theoretically possible for a LAN to become a  
"public digital communication network" as suggested by the  
Examiner, those of skill in the art would readily appreciate that  
the reason for use of a LAN is to provide a **private** network.

Having failed to show any motivation for the alleged  
combination, the Examiner completely ignores her obligation to show  
reasonable likelihood of success. Most probably she has failed to  
do so because there is not reasonable likelihood of success.

MPEP 2143.03 requires that all claim limitations must be  
taught or suggested by the alleged combination. It reads in part:

To establish *prima facie* obviousness of a claimed  
invention, all the claim limitations must be taught or  
suggested by the prior art. *In re Royka*, 490 F.2d 981,  
180 USPQ 580 (CCPA 1974), "**All words in a claim must be  
considered in judging the patentability of that claim  
against the prior art**". *In re Wilson*, 424 F.2d 1382,  
1385, 165 UPQ 494, 496 (CCPA 1970). (emphasis added)

The Examiner has failed to meet the requirement to show all claim  
limitations within the alleged combination, because she has at  
least not considered "all words in a claim" as specifically  
required by MPEP 2143.03.

IA. Claim 1 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.

Claim 1, for example, is limited by transferring "an unavailability message as an HTML display page to said user terminal in response to said service request when said data base management system is unavailable to receive and respond to said service request". The Examiner admits that Cool ICE does not contain this limitation. Therefore, she clearly erroneously states:

Bhatia teaches this feature.

This statement is clearly erroneous in view of the disclosure of Bhatia which has no "unavailability message", no "response to said service request", no "data base management system", and no "unavailable to receive and respond to said service request". The Examiner was respectfully reminded that MPEP 2143.03 requires "All words in a claim must be considered". Nevertheless, she has continues to ignore much of the language and therefore the basis of claim 1.

The rejection of claim 1, and all claims depending therefrom, should be reversed for failure of the Examiner to meet any of the three required showings specified by MPEP 2143.

**IB. Claim 2 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Claim 2 depends from claim 1 and is further limited by "wherein said data base management system includes a repository for storing said unavailability message as a text file". In making her rejection, the Examiner states:

Regarding claim 2: a repository for storing said unavailability message [note: Bhatia, Figure 20 Repository of Documents (1860); col. 60 lines 17-25]

The claim specifically requires "wherein said data base management system includes a repository". Bhatia contains no "data base management system" as claimed. Therefore, the Examiner simply ignores the requirement in contravention of MPEP 2143.03 which obligates the Examiner by stating that "all words in a claim must be considered". The rejection of claim 2 should be reversed for failure of the Examiner to apply MPEP 2143.03.

**IC. Claim 3 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Claim 3 depends from claim 2 and further limits the coupling network. As explained above, the alleged combination cannot meet the limitations of claim 2 from which claim 3 depends. Therefore, the alleged combination cannot meet the further limitations of claim 3. The rejection of claim 3 should be reversed.

**ID. Claim 4 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Claim 4 depends from claim 3 and is further limited by "wherein said repository includes space for storage of at least one variable for said unavailability message permitting an administrator to modify said unavailability message". Having expressly found that Cool ICE has no "unavailability message", the Examiner has somehow found that Cool ICE has the capability "permitting an administrator to modify said unavailability message". Not only is this finding clearly erroneous, it defies common logic. The rejection of claim 4 should be reversed.

**IE. Claim 5 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Claim 5 depends from claim 4 and further limits the claimed data base management system. As explained above, the alleged combination cannot meet the limitations of claim 4 from which claim 5 depends. Therefore, the alleged combination cannot meet the further limitations of claim 5. The rejection of claim 5 should be reversed.

**IF. Claim 6 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 6, for example, is limited by an "administration management system", which is not even acknowledged by the Examiner. The rejection of claim 7 should be reversed as being improperly examined.

**IG. Claim 7 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an



unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 7, for example, is limited by an "wherein said data base management system has a repository having storage for a text file containing said unavailability message", which is not even acknowledged by the Examiner. The rejection of claim 7 should be reversed as being improperly examined.

**IH. Claim 8 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request

[note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 8, for example, is limited by an "wherein said repository has storage for a variable to be included in said unavailability message to permit an administrator to change said unavailability message", which is not even acknowledged by the Examiner. The rejection of claim 8 should be reversed as being improperly examined.

**II. Claim 9 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 9, for example, is limited by an "wherein said publicly accessible digital communications network is the world wide web", which is not even acknowledged by the Examiner. The rejection of claim 9 should be reversed as being improperly examined.

**IJ. Claim 10 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does

not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 10, for example, is limited by an "wherein said user terminal is an industry compatible personal computer having a commercially available web browser", which is not even acknowledged by the Examiner. The rejection of claim 10 should be reversed as being improperly examined.

**IK. Claim 11 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 11, for example, is limited

by an "determining via an administration management system whether said data base management system is currently capable of honoring said service request", which is not even acknowledged by the Examiner. The rejection of claim 11 should be reversed as being improperly examined.

**II. Claim 12 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 12, for example, is limited by an "wherein said transferring step further comprises transferring said unavailability message to said user terminal via

said publicly accessible digital data network", which is not even acknowledged by the Examiner. The rejection of claim 12 should be reversed as being improperly examined.

**IM. Claim 13 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 13, for example, is limited by an "wherein said transferring step further comprises adding a variable to said unavailability message to permit an administrator to modify said unavailability message", which is not even

acknowledged by the Examiner. The rejection of claim 13 should be reversed as being improperly examined.

**IN. Claim 14 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 14, for example, is limited by an "wherein said publicly accessible digital data network further comprises the world wide web", which is not even acknowledged by the Examiner. The rejection of claim 14 should be reversed as being improperly examined.

**IO. Claim 15 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 15, for example, is limited by an "wherein said data base management system further comprises a commercial data base management system", which is not even acknowledged by the Examiner. The rejection of claim 15 should be reversed as being improperly examined.

**IP. Claim 16 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**



Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 16, for example, is limited by an "offering means responsively coupled to said permitting means for offering data processing services according to dialog-based requests if available by honoring said service request to generate said response", which is not even acknowledged by the Examiner. The rejection of claim 16 should be reversed as being improperly examined.

**IQ. Claim 17 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 17, for example, is limited by an "wherein said publically accessible digital communication network further comprises the world wide web", which is not even acknowledged by the Examiner. The rejection of claim 17 should be reversed as being improperly examined.

**IR. Claim 18 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 18, for example, is limited by an "wherein said offering means further comprises storing means for storing a predefined unavailability message as a text file", which is not even acknowledged by the Examiner. The rejection of claim 18 should be reversed as being improperly examined.

**IS. Claim 19 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 19, for example, is limited by an "wherein said offering means further comprises a commercial data base management system", which is not even acknowledged by the Examiner. The rejection of claim 19 should be reversed as being improperly examined.

**IT. Claim 20 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The

Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 20, for example, is limited by an "wherein said permitting means further comprises an industry standard personal computer", which is not even acknowledged by the Examiner. The rejection of claim 20 should be reversed as being improperly examined.

**IV. Claim 21 is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.**

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 21, for example, is limited by an "an HTML display page containing an unavailability message generated by said data base management system which notifies said

human user of unavailability of said data base management system and that said service request will not be honored unless reinitiated at a subsequent time when said data base management system is available", which is not even acknowledged by the Examiner. The rejection of claim 21 should be reversed as being improperly examined.

**IV. Claim 22** is not unpatentable under 35 U.S.C. 103(a) as being obvious over Unisys in view of Bhatia.

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said service request [note: Bhatia Figure 4B; col. 7 lines 4-26 protocol may be event-specific; col. 24 lines 23-39].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. Furthermore, the statement is legally irrelevant, because it does not address the language of any claim or limitation thereof. The Examiner is prohibited by MPEP 2143.03 from disregarding Applicants' claimed invention. Claim 22, for example, is limited by an "a repository for storage of a text file containing said unavailability message", which is not even acknowledged by the

Examiner. The rejection of claim 22 should be reversed as being improperly examined.

**CONCLUSION**


Having thus reviewed the final rejections of claims 1-22, being all pending claims, it seems abundantly clear that the limitations of these claims are not unpatentable in view of the prior art of record. Thus, the rejection of these claims should be reversed as being based upon clearly erroneous fact findings and errors of law.

Respectfully submitted

Niels Gebauer

By his attorney,

Date Aug. 13, 2007

  
\_\_\_\_\_  
Wayne A. Sivertson  
Reg. No. 25,645  
Suite 401, Broadway Place East  
3433 Broadway Street N.E.  
Minneapolis, Minnesota 55413  
(612) 331-1464



## CLAIMS APPENDIX

1. In a data processing environment having a user terminal operated by a user which generates a service request coupled to a publicly accessible digital communications network and having a data base management system which receives and responds to said service request when available by execution of an ordered sequence of command language script, the improvement comprising:

a server coupled to said user terminal via said publicly accessible digital communications network and coupled to said data base management system wherein said server includes an administration management system which transfers an unavailability message as an HTML display page to said user terminal in response to said service request when said data base management system is unavailable to receive and respond to said service request which signifies to said user that said service request will not be honored unless reinitiated at a subsequent time when said data base management system is available to honor said service request.

2. The improvement according to claim 1 wherein said data base management system includes a repository for storing said unavailability message as a text file.

3. The improvement according to claim 2 wherein said publicly accessible digital communications network is the world wide web.

4. The improvement according to claim 3 wherein said repository includes space for storage of at least one variable for said unavailability message permitting an administrator to modify said unavailability message.

5. The improvement according to claim 4 wherein said data base management system is a commercial data base management system.

6. An apparatus comprising:

a. a user terminal operated by a user which generates a service request;

b. a publicly accessible digital communications network coupled to said user terminal;

c. a server coupled to said user terminal via said publicly accessible digital communications network;

d. a data base management system coupled to said server which responds to said service request if available by execution of an ordered sequence of command language script; and

e. an administration management system coupled to said data base management system and said server which transfers an HTML display page containing an unavailability message from said server to said user terminal in response to said service request when said data base management system is not available to indicate unavailability of said data base management system which notifies said user that said service request will not be honored unless reinitiated at a subsequent time when said data base management system is available to honor said service request.

7. The apparatus of claim 6 wherein said data base management system has a repository having storage for a text file containing said unavailability message.

8. The apparatus of claim 7 wherein said repository has storage for a variable to be included in said unavailability message to permit an administrator to change said unavailability message.

9. The apparatus of claim 8 wherein said publicly accessible digital communications network is the world wide web.

10. The apparatus of claim 9 wherein said user terminal is an industry compatible personal computer having a commercially available web browser.

11. A method of communicating between a user terminal operated by a user and a data base management system comprising:

a. transmitting a service request from said user terminal via a publicly accessible digital data communication network to said data base management system;

b. determining via an administration management system whether said data base management system is currently capable of honoring said service request;

c. honoring said service request by the execution of an ordered sequence of command language statements by said data base management system if said determining step determines that said data base management system is currently capable of honoring said service request; and

d. transferring an HTML display page containing an unavailability message from said administration management system to said user terminal if said determining step determines that said data base management system is not currently capable of honoring said service request which notifies said user that said service request will not be honored unless subsequently

transmitted at a future time when said data base management system is available to honor said service request.

12. A method according to claim 11 wherein said transferring step further comprises transferring said unavailability message to said user terminal via said publicly accessible digital data network.

13. A method according to claim 12 wherein said transferring step further comprises adding a variable to said unavailability message to permit an administrator to modify said unavailability message.

14. A method according to claim 12 wherein said publicly accessible digital data network further comprises the world wide web.

15. A method according to claim 14 wherein said data base management system further comprises a commercial data base management system.

16. An apparatus comprising:

a. permitting means for permitting a user to interact with a digital data base by generating a service request in anticipation of a response;

- b. providing means responsively coupled to said permitting means for providing said user with access to a publicly accessible digital communication network via service-based requests;
- c. offering means responsively coupled to said permitting means for offering data processing services according to dialog-based requests if available by honoring said service request to generate said response; and
- d. notifying means responsively coupled to said offering means and said permitting means for notifying said user by transfer of an HTML display page in response to said service request of the unavailability of said offering means when said offering means is unavailable and that said service request will not be honored unless subsequently reinitiated at a time during which said offering means is available.

17. An apparatus according to claim 16 wherein said publically accessible digital communication network further comprises the world wide web.

18. An apparatus according to claim 17 wherein said offering means further comprises storing means for storing a predefined unavailability message as a text file.

19. An apparatus according to claim 18 wherein said offering means further comprises a commercial data base management system.

20. An apparatus according to claim 19 wherein said permitting means further comprises an industry standard personal computer.

21. An apparatus comprising:

- a. a user terminal providing access by a human user for generating a service request;
- b. a publicly accessible digital communications network responsively coupled to said user terminal;
- c. a server responsively coupled to said user terminal via said publicly accessible digital communications network;
- d. a data base management system responsively coupled to said server which honors said service request when available; and
- e. an HTML display page containing an unavailability message generated by said data base management system which notifies said human user of unavailability of said data base management system and that said service request will not be honored unless reinitiated at a subsequent time when said data base management system is available.

22. An apparatus according to claim 21 further comprising a repository for storage of a text file containing said unavailability message.



## **EVIDENCE APPENDIX**

During the prosecution of the subject application, the following three (3) declarations were submitted resulting in the removal of U.S. Patent No. 6,347,330, issued to Dawson et al. as a reference applicable against the subject application:

1. Declaration under 37 C.F.R. 1.132 of Barbara A. Christensen, dated August 6, 2002 and filed August 6, 2002;
2. Declaration under 37 C.F.R. 1.131 of Niels Gebauer, dated December 11, 2002 and filed December 16, 2002; and
3. Declaration under 37 C.F.R. 1.131 of Niels Gebauer, dated January 13, 2003 and filed January 17, 2003.

There is no other evidence or documents deemed appropriate to be included within this Appendix.

## RELATED PROCEEDINGS APPENDIX

There are no decisions or other papers deemed appropriate to be included in this Appendix.